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REMARKS

Claims 15-28 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for the reasons noted in the official action. Claim 15 is amended, by the above claim amendments, and the presently pending claims are now believed to particularly point out and distinctly claim the subject matter regarded as the invention, thereby overcoming all of the raised § 112, second paragraph, rejections. The entered claim amendments are directed solely at overcoming the raised indefiniteness rejection and are not directed at distinguishing the present invention from the art of record in this case.

Although section 35 U.S.C. § 102 is referenced in the official action, there does not appear to be any specific rejection raised under 35 U.S.C. § 102.

Claims 15, 16, 18-24 and 26-28 are rejected, under 35 U.S.C. § 103(a), as being unpatentable over Foster et al. '892 in view of Bilkhu '261. The Applicant acknowledges and respectfully traverses the raised obviousness rejection in view of the following remarks.

Foster et al. '892 relates to a golf training apparatus having a telescopic viewer 7 used to draw the golfer's focus on a marked point 8. The object of Foster et al. '892 is that the golfer should train himself or herself to maintain their focus on the marked point 8 without deviation therefrom throughout the golf swing (see fourth paragraph from the end of the Foster et al. '892 description).

Bilkhu '261 relates to a device which trains the user maintain the position of the golfer's head throughout a swing by watching the device while swinging a club. The user should not see any white line at all during the golf swing if the user consistently maintains a single head position (see the penultimate paragraph of Bilkhu '261's description).

The contrast in philosophy between the two citations is significant. According to Foster et al. '892, absence of motion of the head is required to maintain the marked point 8 within view from beginning of the golf swing to end of the golf swing, whereas according to Bilkhu '261 the absence of motion is require to hide the white line from view.

In addition to this difference in philosophy between Foster et al. '892 and Bilkhu '261, the Bilkhu '261 reference has a clear shortcoming since it requires the golfer to position himself/herself in relation to the device precisely such that where movement of the head would result in the golfer viewing the white line marker. The Bilkhu '261 device reveals nothing to the golfer whether he/she is positioned correctly in relation to the device or golf ball; the golfer is to be positioned so as not to see the white line, but since the whole of the base and U-section are black, there is nothing to ensure that he/she is viewing the correct part of the device or with the correct orientation. Accordingly, movement of the head may not be ascertained by use of the Bilkhu '261 device, simply because such movement may not be of an extent and in a direction relative to the device which reveals the white line; thus, the golfer could too easily be misled into an incorrect belief that there is no head movement. The effectiveness of the Bilkhu '261 device, therefore, is obviously very suspect.

Moreover, the Applicant believes it is not obvious that the Bilkhu '261 teaching adds anything useful to the teaching of Foster et al. '892. Firstly, there is the issue of the suspect effectiveness of the Bilkhu '261 teaching which would be obvious to the skilled person and which, it is respectfully submitted, would deter this reference being considered as having any possible relevance to the Foster et al. '892 device. Secondly, Foster et al. '892 has obvious advantages over what is taught by Bilkhu '261 in that the telescopic viewer 7 and marked point 8 of Foster et al. '892 together provide a focus for the golfer's view to confirm to him/her (when the marked point 8 is in view) that he/she is correctly positioned relative to the device. Also, retention of the marked point 8 in view throughout the entire golf swing provides a positive confirmation of the lack of head movement.

Even if the Bilkhu '261 teaching were considered in the context of the Foster et al. device, there would obviously be no advantage in adopting the use of color as taught by Bilkhu '261. Contrast is already used in the Foster et al. '892 device for the marker point 8 (black on white background). Also, there would be no gain in having the upper surface of the Foster et al. guide block 5 of the same color (black) as the marked point 8, since the upper

surface of the guide block 5 is not seen by the golfer when viewing the marked point 8. The golfer's view is focused on the marked point 8 through the telescopic viewer 7, and the viewer 7 positively precludes visual merging between the marked point 8 and the upper surface of block 5.

Accordingly, the Applicant asserts that it would not be obvious to combine the teachings of Bilkhu `261 with those of Foster et al. `892 because (a) there would be no obvious reason to do so in view of the fundamentally different philosophies between the two references; (b) the obviously suspect effectiveness of the Bilkhu `261 teaching would deter the skilled person from adopting that teaching; (c) the Bilkhu `261 teaching has no obvious advantage to contribute to Foster et al. `892 device; and (d) even if the Bilkhu `261 teaching were adopted it would not produce any material change to the Foster et al. `892 device or contribute in any way to its functionality.

In the light of the forgoing, it is respectfully submitted that it would not be obvious to apply the teaching of Bilkhu `261 to the Foster et al. `892 device, and that invention is accordingly involved in the golfing aid of claim 15. All the remaining claims are dependent directly or indirectly on claim 15, and in this respect are, like claim 15, patentable over the cited art.

The golfing aid of the invention has practical and economic advantages over the prior art devices, that are realized most clearly in the simple step of using an aperture in place of the telescopic viewer 7 of Foster et al. The invention also allows color to be used in a most effective way for operational advantage, as referred to for example in paragraph [025] of the present application, and especially in the last two lines of that paragraph. None of these advantages is applicable or is applicable to the same extent, with any of the devices disclosed by the applied art.

The Applicant thanks the Examiner for indicating that claim 25 is objected to as being dependent upon a rejected base claim but would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claim(s). In accordance

with this indication, claim 25 is appropriately revised to be an independent claim and that amended independent claim is now believed to be allowable.

In addition, new claim 29 is entered in this case and this claim recites the allowable subject matter of claims 15, 24 and 25. Claim 29 is believed allowable for at least some of the same reasons that claim 25 is allowable.

If any further amendment to this application is believed necessary to advance prosecution and place this case in allowable form, the Examiner is courteously solicited to contact the undersigned representative of the Applicant to discuss the same.

In view of the above amendments and remarks, it is respectfully submitted that all of the raised rejection(s) should be withdrawn at this time. If the Examiner disagrees with the Applicant's view concerning the withdrawal of the outstanding rejection(s) or applicability of the Foster et al. '892 and/or Bilkhu '261 references, the Applicant respectfully requests the Examiner to indicate the specific passage or passages, or the drawing or drawings, which contain the necessary teaching, suggestion and/or disclosure required by case law. As such teaching, suggestion and/or disclosure is not present in the applied references, the raised rejection should be withdrawn at this time. Alternatively, if the Examiner is relying on his/her expertise in this field, the Applicant respectfully requests the Examiner to enter an affidavit substantiating the Examiner's position so that suitable contradictory evidence can be entered in this case by the Applicant.

In view of the foregoing, it is respectfully submitted that the raised rejection(s) should be withdrawn and this application is now placed in a condition for allowance. Action to that end, in the form of an early Notice of Allowance, is courteously solicited by the Applicant at this time.

The Applicant respectfully requests that any outstanding objection(s) or requirement(s), as to the form of this application, be held in abeyance until allowable subject matter is indicated for this case.

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In the event that there are any fee deficiencies or additional fees are payable, please charge the same or credit any overpayment to our Deposit Account (Account No. 04-0213).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael J. Bujold", is written over the typed name and contact information.

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